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Attorneys for Defendants,  
City of Lancaster and Lancaster  
Recreation Commission

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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

KATHERINE ELIZABETH NEIMER	:	
a minor, by and through JAMES J. NEIMER	:	
and REBECCA NEIMER, her parents and	:	
natural guardians,	:	
Plaintiffs	:	
	:	
v.	:	CI-02-CV-4034
	:	
CITY OF LANCASTER; LANCASTER	:	JURY TRIAL DEMANDED
RECREATION COMMISSION; and	:	
ISMAEL ALVAREZ,	:	Judge Newcomer
Defendants	:	

**MEMORANDUM OF THE CITY OF LANCASTER AND  
THE LANCASTER RECREATION COMMISSION IN  
OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION,  
TO AMEND THE COMPLAINT, TO REJOIN PARTIES**

I. Argument.

It would appear that the Plaintiffs' counsel has obtained information about the conduct of Defendant Alvarez and the knowledge of persons at the Hamilton Elementary

School about that conduct improperly and perhaps illegally. Plaintiffs attempted to obtain the police investigation into the charges against Mr. Alvarez but were denied pursuant to the provisions of the Criminal History Records Information Act, 18 Pa.C.S.A. §1901 et seq. A copy of the denial letter is attached to the Answer to Plaintiffs' Motion as Exhibit A.

If the information described in paragraph 7(a-g) of Plaintiffs' Motion came from the police records, then that information was obtained improperly and illegally since investigative information may be disclosed only to criminal justice agencies. 18 Pa.C.S.A. §9106(c)(4). The City and the Recreation Commission believe that because Mr. Neimer is a police officer with the Lancaster City Bureau of Police he obtained that information from the police records and provided it to Plaintiffs' present counsel.

Obtaining that information in such fashion would be improper. If the information was obtained from police records in some other way, it was also improperly obtained. The City and the Recreation Commission request that the Court conduct a separate inquiry into how this information was obtained.

If the information was not obtained from police records, then it would appear that Plaintiffs' counsel was in touch with various employees of the School District, which would also be improper. Contact with School District employees without the knowledge of counsel for the School District and the individual school employee defendants, Maura

Fay, or the School District Solicitor, Robert M. Frankhouser, Jr. has already been litigated in this Court and found to be improper.

If Plaintiffs' requests are granted, then the trial of this case will be delayed a considerable period of time. Plaintiffs' counsel already obtained one continuance. The City of Lancaster and the Lancaster Recreation Commission oppose any further delays.

The City and Recreation Commission have also requested that in the event Plaintiffs' motion is granted and trial delayed they be permitted to renew their motion for summary judgment. Plaintiffs opposed the original motion for, among other reasons, the reason that discovery was not complete and the motion was premature. Discovery was completed long ago. Mr. Bily's "investigations" have not disclosed any new information about the City and the Recreation Commission. If prematurity was a basis for denial of the motion, the City and the Recreation Commission should be given another opportunity, since it is clear that as a matter of law they cannot be liable to Plaintiffs.

WHEREFORE, the City of Lancaster and the Lancaster Recreation Commission respectfully request that Plaintiffs' motion for reconsideration, to amend the Complaint, and to rejoin parties be denied or that they be permitted to renew their motion for summary judgment.

Respectfully submitted,

Dated: \_\_\_\_\_, 2003

BENNETT, BRICKLIN & SALTZBURG LLP

By:\_\_\_\_\_

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and Lancaster Recreation Commission

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**PROOF OF SERVICE**

I HEREBY CERTIFY that I am this day serving the foregoing Memorandum of the City of Lancaster and the Lancaster Recreation Commission in Opposition to Plaintiffs' Motion for Reconsideration, to Amend the Complaint, to Rejoin Parties on the persons and in the manner indicated below.

Service by Facsimile and First Class Mail, addressed as follows:

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Attorneys for Defendant, Ismael Alvarez

Dated: \_\_\_\_\_, 2003

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